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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,560	02/11/2004	Franck Abelard	PF030038	2786

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JOSEPH S. TRIPOLI  
THOMSON LICENSING INC.  
2 INDEPENDENCE WAY  
P.O. BOX 5312  
PRINCETON, NJ 08543-5312

EXAMINER
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BROWN, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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2134

MAIL DATE	DELIVERY MODE
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07/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/776,560	<b>Applicant(s)</b> ABELARD ET AL.	
	<b>Examiner</b> CHRISTOPHER J. BROWN	<b>Art Unit</b> 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 3/06/08 have been fully considered but they are not persuasive.

As per claims 1, and 6 Applicant argues that the cited portion of Unger has nothing to do with the Applicants claimed invention. Applicant states that the invention makes clear that there is a possibility that an ECM packet is transmitted a plurality of times but does not waste memory resources by only recording the ECM once in the table.

As per claims 1, and 6, the Examiner respectfully asserts that the applicant argues what is in the specification, and not what is stated in the claim language. The examiner must read the claims with the broadest reasonable interpretation. Unger, US 2004/0062398 as cited and in figure 3 show that each key is recorded according to packet number. It does not state that the packets are repeated, or that the keys are recorded again over the same packet number that has already been sent. Unger would not store a control packet if it was already stored in said table, because the packets are stored according to packet number or time increment. Unger would not receive packets with the same packet number or time increment, despite what is in the applicants specification. Thus Unger meets the limitations of claim 1 as stated. The examiner encourages the applicant to incorporate more of the instant specification into the claims to overcome the prior art of record.

The USC 101 rejection of claim 6, has not been overcome because the claim is non-statutory. A claim that is a computer readable medium containing only data that is nonfunctional descriptive material on a disk and is not statutory. Only a proper data structure on a proper

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medium is statutory where a proper data structure is defined as "a physical or logical relationship among data elements, designed to support specific data manipulation functions." See MPEP 2106.

The Rejection below is substantially similar to the previous non-final rejection

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. Claim 6 is directed towards a medium with digital data. This is not statutory subject matter because it is not a process, machine, article of manufacture, or composition of matter.

Functional descriptive material" includes data structures and computer programs which impart functionality when employed as a computer component.

The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." See MPEP 2106.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Unger US  
2004/0062398.

As per claim 1, Unger teaches recording scrambled digital data comprising the steps consisting of receiving a scrambled digital data stream [0022]. Unger teaches identifying in said data stream a control packet containing at least one key for descrambling at least a part of the data of the stream (ECM) [0022]. Unger teaches storing said control packet in a table (keys stored in a table) [0024]. Unger teaches recording the data stream and the table on a data storage medium (content stored in content store) [0019]. Unger teaches the data stream received in step comprises a plurality of control packets containing at least one descrambling key, wherein the storage step is carried out only if the control packet identified in step is not already stored in said table (multiple packets have ECM and all are different with respect to a function of time or packet number) [0022], [0026].

As per claim 3, Unger teaches an index indicating the position of the control packet in the data stream is moreover stored in the table (ECM as a function of time or as a function of packets

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received) [0025], [0026].

As per claims 4, and 5 Unger teaches the index comprises a serial number of the control packet with respect to the first packet of the data stream recorded (packet # or time index) [0025], [0026] Fig 3.

As per claim 6 Unger teaches a data storage medium, containing: a scrambled digital data stream comprising control packets each containing at least one key for descrambling a part of the digital data, the control packets being multiplexed with the data packets, and a table, stored separately from the data stream and containing at least one control packet (ECM sent with content, and stored in a table separate from content), [0022], [0024].

As per claims 7, and 8, and 9. table also contains, for each control packet, an index, # of the packet, or time stamp indicating the position of the control packet in the data stream. table (ECM as a function of time or as a function of packets received, packet # or time index) [0025], [0026] Fig 3.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER J. BROWN whose telephone number is (571)272-3833. The examiner can normally be reached on 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on (571)272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher J Brown/  
Primary Examiner, Art Unit 2134

6/24/08

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